

You asked two questions and included a comment about the jury foreperson. For the record, I will label these three as you ordered them on the page, and as follows: Question 5, Question 6, and Question 7.

JURY QUESTION #5

6/30/21 11:54 AM

Under Infringement Profits: Causal Relationship pg. 12 could we substitute the word photograph for the word Electronic Guitar Buying Guide because the infringed work was co-mingled?

ANSWER TO JURY QUESTION #5

You first question concerns a section of the jury instructions on page 12 and entitled, "Infringement Profits: Causal Relationship." You ask whether you can "substitute the word photograph for the word[s] Electronic Buying Guide because the infringed work was co-mingled." Because the word "photograph" appears in that section of the instructions, I think you are asking whether you can substitute the words Electronic Buying Guide for the word "photograph." You must follow the instructions I have given to you on how you determine infringement profits. You are to apply those instructions to the facts as you have found them. You must weigh the facts and evidence impartially, without bias, without prejudice and without sympathy. You and you alone are the finders of fact. You and you alone decide what the truth is based upon the evidence presented in this case.

JURY QUESTION #6

6/30/21 11:55 AM

Can 3 Jurors go outside to smoke a cigarette?

ANSWER TO JURY QUESTION #6

Your second question on this page concerns whether 3 jurors may go outside for a break. You may take as many breaks as you need. However, as I explained to you earlier, if any juror leaves the deliberations, the deliberations must stop. If three jurors are taking a break together, those three jurors must not engage in discussions about the case. Discussions about the case must occur only by all ten jurors in the deliberation room.

JURY QUESTION #7

6/30/21

I relinquish my duty as foreperson to \*\*\*\*\*.

ANSWER TO JURY QUESTION #7

With respect to the jury foreperson, that is a decision left exclusively to the jury. That individual should see to it that deliberations are conducted in an orderly fashion and that each juror has a full and fair opportunity to express his or her view, positions, and arguments on the evidence and law.

*Judge McCafferty*  
*6-30-21 1 pm*